P.R. No. 2669/x Presented by Shri Agrawal dated 18.8.06

SINGLE BENCH

37

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2637 OF 2006.

PETITIONER : RAGHVENDRA PRASAD SHARMA, S/o Shri J. P. Sharma, Aged about 52 years, Deputy Director, C. G. Khadi & Gramodyog Jila Panchayat Karyalya, RAIPUR, (C. G.)

VERSUS

RESPONDENTS : 1. State of Chhattisgarh, Through The Secretary Gramodyog Deptt. Mantralaya RAIPUR.

2. The Secretary, Finance Deptt. Mantralaya RAIPUR.

3. The Managing Director, C. G. Khadi & Gramodyog Board, 27/520, Pravin Bhawan, New Shanti Nagar, RAIPUR.

RECEIVED-COPY 18/8/06 CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-78

A-P-R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ...W.P.2636/06... **सन् 200**

(101)

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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**6-7-2006**

Mr. Prafull Bharat, counsel for the petitioner.

Miss Deepali Pandey, Panel Lawyer for the State/respondents No.1 & 2.

Mr. Malay Kumar Bhaduri, counsel for respondent No.3.

By W.P.No.2636/2006 filed by petitioner Prabhu Patle, Deputy Director, Chhattisgarh Khadi & Gramodyog Board, the petitioner has questioned the legality, propriety and correctness of the order dated 16-5-2006 passed by the Chhattisgarh Khadi & Gramodyog Board, Raipur, whereby the Districts of Surguja, Jashpur, Korea & Raigarh have been allocated to the petitioner and he has been appointed as Deputy Director at Ambikapur Headquarter. By W.P. No.2637/2006 filed by petitioner Raghvendra Prasad Sharma, the petitioner has questioned the legality, propriety and correctness of the order dated 16-5-2006, whereby the Districts of Jagdalpur, Kanker & Dantewada have been allocated to him and he has been appointed as Deputy Director with Headquarter at Jagdalpur. As in both these writ petitions, similar question of law is involved, therefore, they are being disposed of by this common order.

The facts of W.P.No.2636/2006 are taken up for disposal of these two writ petitions. Petitioner Prabhu Patle has filed this writ petition questioning the legality, propriety and correctness of the order dated 16-5-2006 whereby the Districts of Surguja, Jashpur, Korea & Raigarh have been allocated to him and he has been appointed as Deputy Director at Ambikapur Headquarter. The petitioner's case is that he is at present posted as Deputy Director at the Head Office. The State Government with the approval of the Finance Department has constituted the setup of the Chhattisgarh Khadi & Gramodyog Board (for short 'the Board') and in the said setup, 38 posts have been

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

102

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश — 2 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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sanctioned for the Head Office, out of which 5 posts of Deputy Director are kept at Head Office, copy of the approved setup is Annexure P-1. Therefore, as per the above setup, the petitioner has been posted at the Head Office and assigned with the work. Copy of the work distribution order is Annexure P-2. Vide order dated 16-5-2006, respondent No.3 had issued the impugned order, whereby the petitioner has been transferred from the Head Office to Zila Panchayat: Ambikapur.

The above order has been questioned on the ground that the said order is illegal and without jurisdiction, as the Board which was constituted vide notification dated 21-12-2001 has been dissolved after the change of Government and thereafter, the Board has not been constituted as provided under Section 4 (1) of the Chhattisgarh Khadi Tatha Gramodyog Adhiniyam, 1978 (for short 'the Adhiniyam, 1978'), therefore, the order dated 16-5-2006 is without authority. As per the Constitution of the Board, 5 posts of Deputy Director have been earmarked for the Head Office, therefore, the said order has been passed in violation of the above setup. The Deputy Director cannot be posted at the District Office and the Board is not entitled for change in the approved and sanctioned setup without prior approval of the Finance Department.

Return has been filed on behalf of respondent No.3 in which it has been mentioned that transfer is an incidence of service, same has been made in exigency of service, and the decision has been taken in the larger public interest, therefore, the petitioner is not entitled to challenge the same. The said decision has been taken by the Board as policy decision regarding opening

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

103

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -3- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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of new offices in the tribal areas of the State i.e. Surguja & Bastar Divisions, and the said offices have been opened for the benefit of the tribal people of that area, as by opening of these office, the local public will be benefited by providing employment, uplifting of their life/status and increase of income. Therefore, the petitioner has been posted at Ambikapur under the administrative control of the Board. The posting order has been issued well within the jurisdiction of the Board and Section 7 (3) of the Adhiniyam, 1978, provides for the same, therefore, there is no illegality. Annexure R-3-B circular dated 21-2-2006 has been issued to the effect regarding interim arrangement of opening of offices at Jagdalpur/Ambikapur. As far as the constitution of the Board is concerned, that was constituted vide notification dated 20th July, 2001. The State has adopted the Act and provisions of the Adhiniyam, 1978 and notification to that effect has been issued. The Board was constituted under Section 4 (1) of the Adhiniyam, 1978 vide notification dated 21-12-2001 (Annexure R-3-E). Vide order dated 5-11-2004, Mr. Kriparam Sahu has been appointed as Chairman of the Board. The Ministry of Gramodyog has sanctioned 5 posts of Deputy Director and other posts. This is the only post structure, but Section 7 (3) of the Adhiniyam, 1978, provides for interim arrangement of appointment and posting of the employees of the Board. Therefore, the Board was entitled to pass the said order. Ministry of Agro & Rural Industries, Govt. of India has approved a scheme of fund for regeneration of traditional industry. Khadi and Village Industries Commission has been designated as the nodal agency for the programme under Khadi Programme. 40 Khadi clusters have been earmarked by Government of India.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

104

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | 4 कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Therefore, a scheme is also going to take place at District: Surguja and a newly established office has been established at Surguja. It has been prayed that the writ petition be dismissed.

Almost identical return has been filed on behalf of the State/ respondents No.1 & 2 i.e. the State of Chhattisgarh & the Secretary, Finance Department, respectively.

I have heard learned counsel for the parties.

Mr. Prafull Bharat, learned counsel for the petitioner, in the first place, argued that there is no legally constituted Board in consonance with the provisions of Section 4 (1) of the Adhiniyam, 1978. Therefore, the order impugned is bad in law and same could not have been passed by the so-called Board. The second limb of argument of Mr. Bharat is that as per the order Annexure P-1, the Govt. of Chhattisgarh created in all 38 posts for the Board and out of that, 5 posts of Deputy Director have been sanctioned at the Head Office. Therefore, without seeking prior approval of the Finance Department, the Board is not entitled for change of Head Quarters of two of its Deputy Directors. Learned counsel, placing reliance on the judgment of the Apex Court in the matter of **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and others** reported in **AIR 2004 Supreme Court 4850**, submitted that the order impugned is against the approved system of the setup Annexure P-1 and the said arrangement has been made in violation of the operative system, as such, the order is bad in law.

In reply to the argument of counsel for the petitioner, Mr. Malay Kumar Bhaduri, learned counsel for respondent No.3 and Miss Deepali Pandey, learned

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

105

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Panel Lawyer for the State/respondents No.1 & 2 argued that in the first instance, the Board was constituted under Section 4 (1) of the Adhiniyam, 1978 vide notification dated 21-12-2001 and thereafter, on completion of three years, Chairman of the Board was again appointed vide order dated 5-11-2004 by the State Government, therefore, the argument of counsel for the petitioner is not sustainable at law. In reply to the second argument, they argued that it is true that as per the order dated 16-8-2004 (Annexure P-1), 38 posts were sanctioned out of which 5 posts of Deputy Director have been shown to be at the Head Office. But, the Board within its power is entitled to ask any of the Officers and keep the Head Quarter of its Officer temporarily at any place in order to discharge its duties smoothly and in order to achieve its objectives for which the Board has been established. Mr. Bhaduri, submitted that it is evident from Annexure R-3-C dated 21-2-2006 that the appointment of Deputy Directors at Jagdalpur & Ambikapur is an internal arrangement.

Having heard learned counsel for the parties, I have perused relevant documents. In order to appreciate the arguments advanced by learned counsel for the parties, it would be profitable to have a cursory glance at the relevant provisions of the Adhiniyam, 1978. Section 4 of the Adhiniyam, 1978, speaks about Incorporation of Board i.e.

> "(1) With effect from such date as the State Government may, by notification, appoint in this behalf, there shall be established for the purposes of this Act a Board by the name of the Chhattisgarh (Khadi and /Gramodyog Board)".

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(106)

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश —6— | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Section 5 deals with Constitution of Board and provides that "*(1) The Board shall consist of the following namely:-- (a) the Chairman to be appointed by the State Government;*" and so on. Section 7 deals with appointment of Managing Director and Officers of the Board and other staff. Section 7 (1) envisages that "The State Government shall appoint a Managing Director who shall exercise such powers and perform such duties as may be prescribed or as may be delegated to him by the Board". Section 7 (3) speaks that "Subject to such control, restrictions and conditions as may be prescribed, the Board may appoint such other officers and employees as may be necessary for the efficient performance of its functions". Section 9 deals with Functions of Board. Section 9 (1) envisages that "It shall be the duty of the Board to organize, develop and regulate village industries." Section 9 (2) envisages that "Without prejudice to the generality of the provisions of sub-section (1), the Board shall also in particular discharge and perform all or any of the following duties and functions, namely: -

(a) to start, encourage, assist and carry on village industries and to carry on trade or business in such industries and in the matters incidental to such trade or business;

(b) to encourage establishment of co-operative societies for village industries;

(c) to conduct training centres and to train people thereat or to arrange for such training at any other institution within or outside the State of Chhattisgarh with a view to equipping them with the necessary knowledge for starting or carrying on village industry;

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(107)

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -7- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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(d) to (e) Not relevant.

(f) to endeavour, to educate public opinion in favour of such industries and to impress upon the public the advantages of patronizing products thereof;

(g) to seek and obtain advice and guidance of experts in village industries;

(h) & (i) Not relevant.

(j) to carry on such other activities as are incidental and conducive to the objects of this Act; and

(k) to discharge such other duties and to perform such other functions as may be prescribed or as the State Government may direct for the purpose of carrying out the objects of this Act.

Section 10 of the Adhiniyam, 1978 speaks about General power of Board. It envisages that " the Board shall, for the purpose of discharging the duties and performing the functions imposed and conferred upon it by or under this Act, have the following powers namely: (i) Not relevant; (ii) to incur expenditure and to undertake programmes including works in any area in the State for the framing and execution of such schemes as it may consider necessary for the purpose of carrying out the provisions of this Act or as may be entrusted to it by the State Government, subject to the provisions of this Act and the Rules made thereunder."

Now coming to the first argument advanced by learned counsel for the petitioner that the Board is not legally constituted in terms of Section 4 (1) of the Adhiniyam, 1978, Section 4 (1) envisages that with effect from such date as the State Government may, by notification, appoint in this behalf, there

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

108

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -8- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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shall be established for the purposes of this Act a Board by the name of the Chhattisgarh (Khadi and /Gramodyog Board). Therefore, as per the above provisions, the Board has to be established once and it is not necessary that after every three years, the Board has to be established again and again. However, Section 5 deals with Constitution of Board i.e. once the Board is established under Section 4 (1), then second question comes about Constitution of the Board and in that respect, the State Government has to appoint the Chairman of the Board as per the provisions of Section 5 (1) (a) and then other office bearers as per the provisions of Section 5 (1). Vide notification dated 21-12-2001 Annexure R-3-E, the State of Chhattisgarh exercising power under Section 4 (1) of the Adhiniyam, 1978, established and constituted the Board by the same order and while establishing the Board, also constituted the Board exercising power under Sections 4 (1) & 5 (1). Therefore, there is no question of establishing the Board time and again. Exercising power under Section 5 (1) of the Adhiniyam, 1978, the Government has already appointed Mr. Kriparam Sahu, as the second Chairman of the Board vide order dated 5-11-2004. Of course, the other members have not been appointed by the said order. Therefore, I do not find any substance in the argument advanced by learned counsel for the petitioner that the Board is not legally established.

Now coming to the second argument advanced by learned counsel for the petitioner, it is true that vide order dated 16-8-2004, the Government of Chhattisgarh, Department of Village Industries, sanctioned 38 posts for the Head Office of the Board inclusive of 5 posts of Deputy Director. Now, question comes for consideration whether without prior approval of the Finance

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक ..... सन् 200**

109

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश — 9 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | Department, the Board is entitled to appoint its Officers at places other than the Head Quarters temporarily or otherwise, whose Head Quarters have been shown at the Main Headquarter, Raipur, as per the order dated 16-8-2004. In the first instance, in return of respondent No.2, Secretary, Finance Department, the objection raised by the petitioner has not been agreed to. Even otherwise, provisions of Section 9 of the Adhiniyam, 1978, extracted above, which deal with Functions of Board, have been shown to be to organize, develop and regularize village industries and also to discharge and perform all or any of the duties and functions. The Board's functions are that to start, encourage, assist and carry on village industries and to carry on trade or business in such industries and in the matters incidental to such trade or business; to encourage establishment of co-operative societies for village industries; to conduct training centres and to train people thereat or to arrange for such training at any other institution within or outside the State of Chhattisgarh with a view to equipping them with the necessary knowledge for starting or carrying on village industry. Section 9 (2) (f) envisages that to endeavour, to educate public opinion in favour of such industries and to impress upon the public the advantages of patronizing products thereof. Section 9 (2) (j) envisages that to carry on such other activities as are incidental and conducive to the objects of this Act and Section 9 (2) (k) envisages that to discharge such other duties and to perform such other functions as may be prescribed or as the State Government may director for the purpose of carrying out the objects of this Act. Section 10 deals with General power of Board and Section 10 (ii) empowers the Board to incur expenditure and to | |

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** W.P.2636/ **सन्** 200 6

(110)

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश — 10 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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undertake programmes including works in any area in the State for the framing and execution of such schemes as it may consider necessary for the purpose of carrying out the provisions of this Act or as may be entrusted to it by the State Government. Section 7 (3) envisages that subject to such control, restrictions and conditions as may be prescribed, the Board may appoint such other officers and employees as may be necessary for the efficient performance of its functions. Therefore Section 7 (3) of the Adhiniyam, 1978 envisages that subject to control, restrictions and conditions prescribed, the Board may appoint such other officers and employees necessary for efficient performance of its functions.

A conjoint reading of all these above provisions makes it clear that the Board is fully empowered to undertake the programmes including worker in any area of the State for promotion and execution of the schemes, and to discharge its functions the Board can organize, develop and regulate village industries and also discharge its duties and functions as provided in clause (f) (g), (j) & (k) of Section 9. The impugned order was passed on 16-5-2006 in which it has been mentioned that the Board of Directors in its meeting dated 6-2-2006 decided that in order to provide self-employment and in order to increase the income of Scheduled Tribes, Scheduled Castes, Other Backward Classes and females, it has been decided that in the backward districts viz., Jagdalpur, Kanker, Dantewada, Surguja, Jashpur, Korea & Raigarh, two Deputy Directors must be posted and therefore, one Deputy Director with Headquarter at Jagdalpur and second Deputy Director with Headquarter at Ambikapur be allocated. Ultimately, one Deputy Director at Jagdalpur for

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(111)

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -11- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Districts: Jagdalpur, Kanker & Dantewada and another Deputy Director at Ambikapur for Districts: Surguja, Jashpur, Korea & Raigarh were allocated for implementation of the above decision of the Board. Prior to that, the Managing Director of the Board vide its circular dated 21-2-2006, created these two Headquarters at Jagdalpur & Ambikapur with the above mentioned districts as an internal arrangement for the purpose of carrying out the schemes of the Board. The Board in order to achieve its main objectives and functions mentioned earlier can make arrangement by deploying its officers in any place of the State of Chhattisgarh.

The order dated 16-8-2004 (Annexure P-1) was issued in the year 2004, whereby various setup at the headquarter as well as the district headquarters and other places was sanctioned and in my considered opinion, in order to achieve its objectives and perform its functions, it cannot be said that the Board is not entitled to shift the headquarters of any of its officers. The Finance Department has also not objected to such a system and in reply they have not stated that for change of headquarter or for temporarily establishing any office in any area of the State, prior financial approval is required. As far as the judgment cited by Mr. Bharat, learned counsel for the petitioner, is concerned, on facts I do not find that the said judgment is of any help to the petitioner, as there is no violation of any operative guidelines or any malafide in appointing the petitioner.

In the result, I do not find any substance in this writ petition (W.P. No.2636/2006). The facts of W.P.No.2637/2006 are similar to that of W.P. No.2636/2006. The petitioner in W.P.No.2636/2006 namely, Prabhu Patle was

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ....W.P.2636/**सन्** 2006

112

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश -12- | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| Soma | appointed at Ambikapur, whereas, the petitioner in W.P.No.2637/2006 namely, Raghvendra Prasad Sharma, was appointed at Jagdalpur. Both the writ petitions are devoid of merit, same are liable to be dismissed and they are hereby dismissed. No order as to costs.<br><br>**Sd/-**<br>**L.C. Bhadoo**<br>**Judge** | |

12406